

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

NADJATOLLAH ENAYATI,

Plaintiff and Appellant,

v.

ALAEDDIN ENAYATI, Individually and
as Successor Trustee, etc., et al.,

Defendants and Respondents.

B207315

(Los Angeles County
Super. Ct. No. SP006987)

APPEAL from a judgment of the Superior Court of Los Angeles County. Terry Friedman, Judge. Affirmed.

Law Offices of Edward A. Hoffman and Edward A. Hoffman for Plaintiff and Appellant.

Law Offices of Ehsan Afaghi, Ehsan Afaghi and Firouzeh Simab for Defendants and Respondents.

Nadjatollah Enayati (Nad) appeals from a judgment denying his petition to invalidate the revocable living trust of his deceased wife, Sorraya Faridian (Sorraya), on the ground of undue influence of their son, Alaeddin Enayati (Al). We affirm the judgment.

BACKGROUND

The following testimony was elicited at a bench trial on the petition.

At the time of Sorraya's death in February 2005, she and Nad had been married over 50 years. They had four adult children, Hessameddin Enayati (Sam), Flora Enayati (Flora), Roya Enayati (Roya), and Al. Sam, Flora, and Roya were married. Al was not married and for about 25 years had lived with Nad and Sorraya in the family residence in Beverly Hills (Residence), purchased by the family in 1978. In 1979, title to the Residence was held by Nad with a one-half interest, Sorraya with a one-sixth interest, Sam with a one-sixth interest, and Al with a one-sixth interest. Immediately before June 9, 2004, when Sorraya executed a revocable living trust and a quitclaim deed transferring her interest in the Residence to her trust, title to the Residence was held by Sam, with a one-sixth interest, and by Nad and Sorraya, who together held a five-sixths interest as joint tenants.

Al was in business with Sorraya's brother, and a property dispute arose which resulted in litigation in 2004 in which Al sided with Sorraya's family on one side against Nad and Sam on the other side. Nad was angry with Al from 1999 to 2004. According to Roya, her parents did not get along with each other; Al did not get along with Sam. During the last few years of Sorraya's life, Flora and Sam saw Sorraya every day and helped her with her daily activities. Al, who lived at the Residence, saw Sorraya almost every day, and Roya visited her every week or so. Sorraya's sister testified that toward the end of Sorraya's life, Sorraya did not talk to Nad very much and spent more time with Al.

According to Flora, Sorraya spoke only a few English words and did not read in English or watch English language television programs. Although Sorraya had a driver's license, Sorraya took the driving test in Farsi. Flora admitted that Sorraya would

communicate with the gardener in English and use her hands to express herself to him. According to Roya, Sorraya could read and write in English, Roya and Sorraya watched some English language television shows together, and Sorraya spoke English to Roya's daughter and to hospital staff when Sorraya was hospitalized for colon cancer surgery in October 2004. Al testified that Sorraya understood and could speak English but "not very well."

Sorraya loved all of her children and wanted to make sure they were not cheated out of their rights. In May 2004, Al obtained some estate planning forms from notary Ronald Kadonaga's legal document business, known as "We the People." On June 9, 2004, Al transported Sorraya to Kadonaga's office, where they were met by Farhad Bolandian, Al's accountant, whom Al asked to be a witness to the signing of the trust. Under Sorraya's trust, the trust property (that is, Sorraya's interest in the Residence) was to be distributed upon her death to Al and Roya, with Al receiving 75 percent and Roya 25 percent of the trust property.

Kadonaga explained some of the terms of the trust to Sorraya in English, including the beneficiaries and their respective shares. Sorraya signed the trust and related documents, which were notarized by Kadonaga. According to Kadonaga, Sorraya looked pallid and appeared to be under some physical stress, but she was mentally alert and not senile; Kadonaga believed that she understood what Kadonaga was saying and at his direction she was able to sign or initial the documents appropriately. Kadonaga did not remember whether anyone translated his explanations of the trust provisions from English into Farsi; Kadonaga did not speak Farsi.

At the conclusion of the meeting with Kadonaga, Sorraya produced a document handwritten in Farsi and told Kadonaga in English that the document contained her wishes and that she wanted the document notarized, which Kadonaga did. The document was translated into English, with the English translation admitted as exhibit 20. It stated that Sorraya "would like to give $\frac{3}{4}$ of my ownership shares of the [Residence] to my second son [Al], and the remainder of $\frac{1}{4}$ of it to my younger daughter Roya . . . , I hope they would be beneficial and auspicious for them after my decease."

Bolandian testified that Sorraya knew English. At Kadonaga's office, Sorraya told Bolandian that she studied English at an adult school at Beverly Hills High School. Bolandian asked Sorraya in Farsi whether she understood what Kadonaga was saying, and Sorraya responded that she understood some of what he was saying. Both Bolandian and Al translated some of Kadonaga's words into Farsi for Sorraya. Sorraya told Bolandian that she did not have a good relationship with Nad and that Nad did not treat her well. She also told Bolandian that Al was her supporter, took care of her, and was the only person who fought for her. As Sorraya, Al, and Bolandian were walking to their cars after leaving Kadonaga's office, Sorraya asked Bolandian to give advice to Al to marry and have a family because "after me they are going to kick [Al] out of the house, because nobody likes him."

In October 2004, Nad learned about Sorraya's trust and that she had transferred her interest in the Residence into the trust. Nad arranged for Partow Abner, a notary and escrow officer, to prepare transfer deeds placing Al back on title to the Residence and other documents. Abner brought the documents to the Residence on October 31, 2004, shortly after Sorraya had returned home from the hospital for cancer surgery. Flora and Al also were at the Residence with Nad, Sorraya, and Abner.

Abner testified as follows. Sorraya looked pale and was dressed in bed clothes. Nad said that he would sign a deed giving Al an ownership share in the Residence if Sorraya canceled her trust. An argument erupted between Nad and Sorraya, who said that she would not cancel her trust and that Nad was not fair to Al and favored Sam. Sorraya also said that "everything that I have belongs to Al, and if you don't want to transfer this property to him, I have other properties and I'll make sure that he gets all the properties." Abner left without notarizing any documents.

In Nad's case-in-chief, Flora testified about Sorraya's limited English abilities. The trial court allowed Al, over Nad's objection, to call a rebuttal witness, Rodolfo Perez, the family gardener. Perez testified in English without an interpreter. He said that Sorraya spoke to him in English and her English was better than his.

At the close of Nad's case, after Nad's examination of Al but before Al's attorney had an opportunity to examine Al, Nad's attorney moved the trial court for a ruling that Nad had established the requirements of undue influence by Al sufficient "to shift the burden of going forward with the evidence" to Al. Al's attorney responded that "if [Nad's] counsel has no further witnesses and he wishes to rest at this time, because he just argued his case, then I would request that he rest, and then I will make a motion for judgment under [Code of Civil Procedure section] 631.8 at this time"¹

The court responded, "What is odd to me is that each of these requests is made in the middle of a witness's testimony. [¶] So are you, Mr. Ruttenberg [attorney for Nad], waiving any opportunity to re-examine [Al] following Mr. Reiss [attorney for Al]?" Nad's attorney stated that he had no more questions of Al. The trial court then stated, "All right. Well, I will take the petitioner's [Nad's] request first, and I will deny it."

Al's attorney then argued his motion for a judgment under section 631.8. Nad's attorney argued in opposition to the motion. During that argument, Nad's attorney stated, "I'm using parts of my trial brief because I think in part I'm giving my closing argument at this time, and I will waive closing argument if I ever get to it."

The trial court granted Al's motion, stating that it "considered and weighed all the evidence, evaluated the credibility of witnesses; I've read and considered the trial briefs [¶] Yesterday I denied the petitioner's motion to find presumption of undue influence. I am going to grant [Al's motion for a judgment] for the following reasons: [¶] One, I believe that the trust is consistent with Sorraya's intent. I find exhibit 20 to be a highly relevant document and a credible one based upon testimony about its preparation. I believe that the petitioner has failed to meet his burden of establishing undue influence. . . . [P]articularly, because of the inconsistency of his theory of undue influence with the expression of Sorraya's intent contained in exhibit 20. [¶] Secondly, I believe that the petitioner relies substantially on the argument that Sorraya did not understand English. He did not meet his burden on that. . . . [T]here was conflicting

¹ Unspecified statutory references are to the Code of Civil Procedure.

evidence about that, but frankly, I'm most persuaded by evidence of the independent witnesses, Mr. Perez, who particularly, seems to me, has no interest in the outcome of this case, to some extent Mr. Kadonaga, and also the unrefuted evidence that Sorraya attended adult school to learn English. So I certainly can't find that the petitioner has met his burden to show that she did not understand English. More evidence actually shows that she had some understanding."

With respect to the credibility of witnesses, the court found that Nad was not credible. Of all the family members, Roya was the most credible witness. The court found Partow Abner "to be quite significant and credible. And what it led me to conclude, that Al's behavior was not to exert undue influence over his mother, but to protect her from his father, her husband. [¶] And so for those reasons, I will grant the motion [under section 631.8]." A statement of decision incorporated the above findings.

Nad appealed from the judgment denying his petition.

DISCUSSION

Nad's principal contentions are (1) the trial court erred in denying his request to shift the burden of proof on the issue of undue influence to Al; (2) the court erred in excluding from evidence a document which Nad and Sam required Flora and Roya to sign after Sorraya's death when the daughters came to retrieve Sorraya's furs and jewelry pursuant to her will; and (3) the court erred in permitting Perez to testify because his name was not on a joint witness list signed by Nad's attorney, but on a subsequent purported joint witness list filed by Al's attorney but not signed by Nad's attorney.

"As a general proposition, California law allows a testator to dispose of property as he or she sees fit without regard to whether the dispositions specified are appropriate or fair." (*Estate of Sarabia* (1990) 221 Cal.App.3d 599, 604.) "The presumption in favor of a will may be neutralized by a presumption that undue influence was brought to bear on the testator. The presumption of undue influence arises only if *all* of the following elements are shown: (1) the existence of a confidential relationship between the testator and the person alleged to have exerted undue influence; (2) active participation by such person in the actual preparation or execution of the will, such conduct not being of a

merely incidental nature; and (3) undue profit accruing to that person by virtue of the will. If this presumption is activated, it shifts to the proponent of the will the burden of producing proof by a preponderance of the evidence that the will was not procured by undue influence. It is for the trier of fact to determine whether the presumption will apply and whether the burden of rebutting it has been satisfied.” (*Id.* at p. 605.) Thus, “[i]t is for the trier of fact to determine whether the presumption of undue influence has been rebutted.” (*Estate of Baker* (1982) 131 Cal.App.3d 471, 483.)

“The trier of fact is the sole judge of the credibility and weight of the evidence in a will contest the same as in any other case. [Citations.] The determination of the trier of fact will be interfered with on appeal only when it appears that the witness’ testimony is inherently so improbable as to be unworthy of belief.” (*Estate of Baker, supra*, 131 Cal.App.3d at p. 483.)

The purpose of section 631.8 is to dispense with the need for the defendant to produce evidence where the court is persuaded that the plaintiff has failed to sustain his burden of proof. (*Combs v. Skyriver Communications, Inc.* (2008) 159 Cal.App.4th 1242, 1262–1263.) The trial judge sits as a trier of fact, determining the credibility of witnesses and weighing the evidence; the judge may order judgment in favor of the moving party. (*Ibid.*) We review a judgment entered under section 631.8 under the substantial evidence standard. (*Id.* at p. 1263.)

Nad fails to establish the trial court committed any error with respect to the issue of undue influence because at the time of ruling on Nad’s request, the trial court had heard all of the evidence and Al had moved for a judgment under section 631.8. Because the trial court was entitled to weigh the evidence and make credibility determinations in connection with *both Nad’s request for a presumption of undue influence and Al’s motion for a judgment under section 631.8*, the trial court did so and weighed the evidence in Al’s favor to find that the presumption of undue influence did not arise. Nad, in his reply brief, expressly disavows any argument regarding the sufficiency of the evidence, so we conclude that the trial court properly denied Nad’s request. Nad thus fails to establish

that the trial court committed any procedural error with respect to the issue of undue influence.

Nad also fails to establish error with respect to evidentiary rulings (1) excluding a document which Nad required Flora and Roya to sign after Sorraya's death when the daughters came to retrieve their mother's furs and (2) permitting Perez to testify when he was not listed on the parties joint witness list signed by both attorneys. Nad cites no pertinent authorities as to the first ruling and no authorities of any sort as to the second ruling, so we conclude that he fails to establish any error or abuse of discretion.

Assuming error for purposes of argument, Nad does not establish prejudice. Roya testified with respect to the document and its contents, and in any event the document does not appear to be relevant to the key issue of undue influence by Al. And Perez's testimony was cumulative to a great deal of other evidence of Sorraya's abilities to understand and speak English. Accordingly, we conclude that there is no showing that the purported errors were prejudicial.

Finally, Nad complains that Al's attorney, in his argument on the motion for a judgment, urged the trial court to adopt inferences that were not supported by the evidence. But in Nad's opening brief, he admits that the court "said nothing about these arguments in its decision." Not only has Nad failed to establish any attorney misconduct, but he fails to show any prejudice.

As no prejudicial error is shown, the judgment will be affirmed.

DISPOSITION

The judgment is affirmed. Respondents are entitled to costs on appeal.
NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

JOHNSON, J.